



Income Tax Update

News and developments for tax practitioners


A publication of the Income and Oil Taxes Division

Rick Clayburgh
Tax Commissioner

Tax amnesty available until January 31, 2004

A limited, one-time opportunity for taxpayers to save money on taxes is available through North Dakota's Tax Amnesty Program until Saturday, January 31, 2004. The 2003 North Dakota Legislative Assembly passed, and Governor Hoeven signed into law, Senate Bill

2015 instructing the Office of State Tax Commissioner to offer a tax amnesty program. The program allows delinquent taxpayers and nonfilers a chance to voluntarily file and pay overdue taxes without legal action, with a waiver of all penalties and 75 percent of the interest normally charged. To participate, a taxpayer must file a tax amnesty application form, and must take all required actions including payment of all tax and reduced interest on or before January 31, 2004. All state taxes and local option taxes administered by the Office of State Tax Commissioner are eligible.


For complete details on North Dakota's Tax Amnesty Program, go to our Web site at www.ndtaxdepartment.com and click on **North Dakota Offers Tax Amnesty**, or call (701)328-2775. 

Inside this issue:

- Tax amnesty available until Jan. 31, 2004 1
- Forms 38, 58, and 60 will not be automatically mailed for 2003 1
- Update: Employers do not have to round income tax withholding amounts 2
- Federal changes may affect 2003 Forms 58 and 60 2
- Use 2-D barcode for computerized paper return 3
- Significant changes to corporation income tax law 4
- E-filing takes another giant stride 4
- Contact information 6

Forms 38, 58, and 60 will not be automatically mailed to taxpayers for 2003

The Office of State Tax Commissioner will not be automatically mailing the 2003 version of Forms 38, 58, and 60 to taxpayers who filed them for 2002. This departure from past practice is attributable to the minimal use of these forms. A review of returns filed with our office indicates that only about 10 percent of filers used the forms mailed to them. Instead, most filers used forms printed by computer, either by downloading them from our Web site or using tax preparation software. As part of our ongoing efforts to keep printing and mailing costs to a minimum and reduce paper waste, our office is discontinuing the automatic mailing of these forms starting with the 2003 tax year. A notice was mailed to all taxpayers who filed one of these forms for the 2003 tax year to inform them of this change in practice.

You may download these forms from our Web site at www.ndtaxdepartment.com. Click on **Individual Income, Forms**. The 2003 Form 38 will be found under the heading **2003 Fiduciary Income Tax**, and the 2003 Form 58 and 2003 Form 60 will be found under the heading **2003 Partnership and S Corp Tax**. Or e-mail us at individualtax@state.nd.us. 




Office of
State Tax Commissioner
600 E Blvd Ave, Dept 127
Bismarck ND 58505-0599

ndtaxdepartment.com
taxinfo@state.nd.us
www.discovernd.com

Update: Employers do not have to round income tax withholding amounts to the whole dollar

In mid-December 2003, the booklet *2004 Income Tax Withholding Rates & Instructions (For wages paid in 2004)* was mailed to all registered employers and certain tax practitioners. In that booklet, under “*What’s New For 2004*,” we informed employers about a new requirement to round the result of their North Dakota income tax withholding calculations to the whole dollar.

The new requirement was intended to augment the 2003 legislation allowing taxpayers to round numbers to the whole dollar on their income tax returns. Removing cents from income tax withholding amounts benefits both taxpayers and the state by lessening the negative effects of rounding—the negative effects being an increased tax due or a reduced refund—and by promoting the simplification of the income tax return.

While the new requirement is a positive change for taxpayers and the state, the later than usual mailing of the 2004 withholding booklet may not allow employers sufficient time to incorporate this change into their withholding processes for 2004. Therefore, it has been determined that employers may disregard the rounding requirement explained under “*What’s New For 2004*.” Unless they choose to do so, employers do **not** have to round the results of their North Dakota income tax withholding calculations under Method One or Method Two. 


“Unless they choose to do so, employers do not have to round the results of their North Dakota income tax withholding calculations under Method One or Method Two.”

Federal forms’ changes may affect final 2003 Forms 58 and 60

At the time we finalized Form 58 (partnership return of income) and Form 60 (small business corporation income tax return) for the 2003 tax year, the Internal Revenue Service had not yet released the instructions for the 2003 Form 1065 and 2003 Form 1120S. Pending IRS changes to the instructions for these federal forms may affect the preparation of the 2003 versions of Form 58 and Form 60. In particular, one of the pending changes relates to the manner of reporting certain dispositions of property for which an I.R.C. § 179 expense deduction was claimed in a prior year. This change may result in the net gains from these dispositions not being reported on Schedule K of either Form 1065 or Form 1120S. Income and deduction information reported on Schedule K of these federal forms is required to complete Forms 58 and 60.

Until the IRS releases its final version of the instructions to the two federal forms, we are unable to ascertain the effects of the IRS form changes on the state forms. Through official communication channels, the IRS has informed us that they anticipate finalizing the instructions to the federal forms sometime in December 2003. As soon as we have access to them, we will determine what action may be necessary to address any problems in our forms. An update on this matter will be posted to our Web site home page under “**What’s New!**”

Note: Please be advised that you may use the 2003 versions of Form 58 and Form 60; we are not going to reprint them.

If you have any questions, please contact Joseph Becker (phone: 701-328-3451/e-mail: jjbecker@state.nd.us) or Norm Gabel (phone: 701-328-3659/e-mail: ngabel@state.nd.us). 


If you prepare a paper return by computer for a client, use software's 2-D barcode feature

Whether it's because your clients prefer not to file their returns via electronic means, or because you do not offer electronic filing to your clients, you are preparing paper returns for some or all of your clients. And it's a good bet that you're using a computer with special tax software to prepare and print them. Please check to see if your tax software includes a feature called a two-dimensional (2-D) barcode. If it does, we ask that you turn that feature on.

The 2-D barcode feature collects all of the information from the return and places it in a two-dimensional barcode that is printed adjacent to the name/address area on page 1 of the paper return. Upon receipt of a return with the barcode, our office simply scans the barcode to retrieve all of the information contained in the return. Even though a paper return is filed, the 2-D barcode feature allows our office to electronically retrieve and process the information on the return, and reap nearly all of the same benefits afforded by electronic filing—streamlined data entry, fewer errors, reduced cost to taxpayers, and fast refunds.

Not all tax software products support the 2-D barcode feature. Currently, the 2-D barcode feature is supported by the following tax preparation software companies: CCH, Inc., 2nd Story Software, Intuit, Drake Software, Creative Solutions, H&R Block, and TaxSlayer. If you aren't sure if your tax software has the 2-D barcode feature, or if you don't know how to turn the feature on, contact Chuck Picard, Information Management Officer, North Dakota Office of State Tax Commissioner (phone: 701-328-3129/cpicard@state.nd.us).

Making corrections to paper returns with 2-D barcodes. If you're using tax software that has the 2-D barcode feature, and the feature is enabled, keep the following in mind if you or your client need to make a correction to a return you have already completed:

- If the completed return has been printed **and mailed**, prepare and file an amended return to correct the error.
- If the completed return has been printed **but not mailed**, first make the necessary changes to the return on your computer using the tax software. Then print out the entire return again and mail in the reprinted version only. (*Note: If you prefer to print out only those pages with corrections, you may do so. However, in all cases, be sure to print out page 1 of the corrected return with the barcode even though it contains no corrections.*) Making the changes online ensures that the corrected information is picked up by the 2-D barcode feature and incorporated into the barcode printed on page 1 of the return. Do not make any corrections by simply handwriting them on the face of the return that you originally printed out — handwritten corrections will not be picked up by the 2-D barcode feature and, therefore, will not be read by our barcode scanner.
- Advise your clients to not make any handwritten corrections on the return. 

"Please check to see if your tax software includes a feature called a two-dimensional (2-D) barcode. If it does, we ask that you turn that feature on."

“Effective for a North Dakota net operating loss incurred in a taxable year beginning after Dec. 31, 2002, a corporation may not carry the loss back to a previous tax year.”

Reminder: There are significant changes to the corporation income tax law that take effect in 2003 and 2004


In our July 2003 edition of this newsletter we informed you about changes made to the corporation income tax law by the 2003 North Dakota Legislative Assembly. Because these changes may affect the calculation of your estimated tax for the 2004 tax year as well as your tax planning for clients, we are providing it again as a reminder.

Effective for a North Dakota net operating loss incurred in a taxable year beginning after December 31, 2002, a corporation may not carry the loss back to a previous tax year. A related provision allowing a corporation to file a claim for refund or credit of an overpayment resulting from a North Dakota net operating loss carryback is ineffective for the same losses. *Note: These changes do not affect the carryback of capital losses, so capital losses may still be carried back.*

Effective for taxable years beginning after December 31, 2003, the following changes were made to the corporation income tax law:

- The federal income tax is no longer allowed as a deduction in calculating North Dakota taxable income.
- In conjunction with the repeal of the federal income tax deduction, the tax rates were changed as shown in the table below.

If North Dakota taxable income is:		The tax is:	
Over	But not over		
\$ 0	\$ 3,000	2.60%	of North Dakota taxable income
3,000	8,000	\$ 78.00 + 4.10%	of the amount over \$ 3,000
8,000	20,000	283.00 + 5.60%	of the amount over 8,000
20,000	30,000	955.00 + 6.40%	of the amount over 20,000
30,000		1,595.00 + 7.00%	of the amount over 30,000

- If an eligible corporation elects to use the water's edge method to apportion its income, in addition to the tax calculated using the regular tax rates (shown above), the corporation must pay a surtax of 3.5% of North Dakota taxable income. 

E-filing takes another giant stride


As of December 4, 2003, the Office of State Tax Commissioner received 103,910 electronically filed North Dakota individual income tax returns for the 2002 tax year—a 32 percent increase over the number filed for the previous year. This means that over one-third of all individual filers used e-file this past filing season.

Please keep the following in mind as you prepare for the e-filing of 2003 tax year returns:


- The IRS now allows more than one state return to be filed by a taxpayer under the Federal/State *e-file* Program. As before, the federal return along with one of the taxpayer's multiple state returns must be electronically filed. If this first transmission is approved, then another state return may be electronically filed based on the first approved filing. The IRS will automatically send a copy of the federal return with each state return transmitted to the states. Check with your software vendor to see if this option is supported in their software.

- The IRS will now accept a return electronically filed on behalf of a deceased individual under the Federal/State *e-file* Program. If supported by the software, North Dakota will also accept the return electronically.
- Only use Form ND-1V to make a payment of a balance due on an electronically filed original return. ***Do not use Form ND-1V for any of the following purposes: (1) Pay a balance due on a paper return; (2) Pay a balance due on an amended return, whether it is filed electronically or on paper; (3) Make an estimated tax payment; or, (4) Make an extension payment.***

Following is a list of some of the more common errors encountered with e-filed returns:

- **Filing a paper return (anyway).** Unless you already do so, please advise your clients *not* to file the paper copy of their return.
- **Incorrect address.** Please ask your clients for their current address *each year*, and update your files.
- **Missing SSN of spouse.** Please review all returns to ensure that the social security numbers of both spouses are included on the return (even if filing separately).
- **Assuming direct debit applies.** Please inform your clients that even though they choose to pay their federal tax due on an electronically filed return using the direct debit option, a balance due on their North Dakota return will not automatically be paid in the same manner. They must pay their North Dakota tax due by check (or money order) along with Form ND-1V or by credit card.
- **Submitting payment before e-filed return has been accepted.** Please advise your clients not to submit payment of their tax due until after they are informed that their e-filed return has been accepted by our office. However, if the return is transmitted close to the due date, advise your clients to submit their payment by the due date even though they have not received notification of acceptance to ensure timely payment.
- **Extension block is not being checked on extended returns.** To prevent an unwanted late filing penalty notice, make sure the extension indicator on the state return is filled in for those clients having an extension of time to file. Your software program may not automatically do this for you even though there is an extension of time to file the federal return. 

Some corporations are not correctly using the temporary federal 5-year NOL carryback period.

In 2002, federal income tax law was changed to provide for a temporary five-year carryback period for net operating losses incurred in tax years ending in 2001 and 2002. [See *Job Creation and Worker Assistance Act of 2002, P.L. 107-147, § 102(1); codified at I.R.C. § 172(b)(1)(H).*] Please note that this federal five-year carryback period only applies if the ***last day of the tax year*** falls into the 2001 or 2002 calendar year. A number of corporations have attempted to use it for net operating losses calculated on their 2002 federal and state income tax returns filed for fiscal tax years ending in the 2003 calendar year. In these cases the temporary five-year carryback period is not available for their 2002 tax (and form) years because the last day of their tax years did not fall into the 2001 or 2002 calendar year. 

OFFICE OF STATE TAX COMMISSIONER

600 E. Boulevard Ave., Dept. 127
Bismarck, ND 58505-0599

PRESORTED
STANDARD
U.S. POSTAGE
PAID
BISMARCK ND
PERMIT NO. 189

Where to reach us if you have questions or need information...

	Phone	E-mail
Individual income tax	701-328-3450	<i>individualtax@state.nd.us</i>
Corporation income tax	701-328-2046	<i>corptax@state.nd.us</i>
Income tax withholding	701-328-3125	<i>withhold@state.nd.us</i>
Commissioner's office	701-328-2770	<i>taxinfo@state.nd.us</i>

Speech or hearing impaired
Call Relay ND **1-800-366-6888**

Fax **701-328-3700**



Office of
State Tax Commissioner
600 E Blvd Ave, Dept 127
Bismarck ND 58505-0599

ndtaxdepartment.com
taxinfo@state.nd.us
www.discovernd.com

Income tax update is a publication of the Income and Oil Taxes Division, North Dakota Office of State Tax Commissioner, 600 E. Boulevard Ave. Dept. 127, Bismarck, ND 58505-0599. It is published annually at the end of the calendar year and after each legislative session in June. It is intended for tax professionals and other persons interested in developments, updates, and other information about North Dakota's income and financial institution tax laws, rules, and administrative policies.

This newsletter is available free of charge on our Web site at www.ndtaxdepartment.com or in hard copy. We offer an e-mail notification service to subscribers as soon as a new issue is placed on our Web site. To join the e-mail service, simply visit our Web site and click on "Newsletter Subscription" located on the right side of the blue bar at the top of our home page. If you prefer to receive a hard copy, contact the Income Tax Division at (701)328-3450 to be placed on our mailing list.